

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KATHLEEN ESPINOSA, et al.,

Plaintiffs,

No. C 06-04686 JSW

v.

CITY AND COUNTY OF SAN FRANCISCO,
et al.,

**ORDER REGARDING
OUTSTANDING MATTERS**

Defendants.

Now before the Court are several outstanding matters. The Court HEREBY GRANTS the motion to quash the subpoena. At the pretrial conference, the Court asked the parties to deliberate regarding the presentation of their evidence to the jury electronically, to the extent possible. The Court FURTHER ORDERS that the parties shall file a document by no later than 10:00 a.m. on September 2, 2014 to inform the Court as to whether they are amenable to presenting evidence to the jury electronically in a format that is searchable and readable. All of the exhibit descriptions should include the exhibit numbers for each exhibit.

The Court DENIES Plaintiffs' request to file a reply on the issue of civil penalties under California Civil Code section 52.1. The Court finds that Plaintiffs are not entitled to civil penalties pursuant to California Civil Code section 52.1. In the additional briefing on this issue, Defendants addressed for the first time the maximum amount of statutory damages that may be awarded under this statute, arguing that Plaintiffs are limited to the maximum of \$4,000 for each of the three alleged violations. Moreover, the authority on which Defendants rely was

1 limited to federal law, despite the fact that this issue arises pursuant to a claim under California
2 law. Defendants argue that Plaintiffs are limited to the maximum of \$4,000 for each of the
3 three alleged violations. It is not clear whether Plaintiffs agree or contend that they may seek
4 \$4,000 from each Defendant Officer for each alleged violation. The Court ORDERS the parties
5 to meet and confer regarding this issue. If the parties are able to stipulate as to whether the
6 Plaintiffs are limited to the maximum amount of statutory damages Plaintiffs may seek, they
7 shall file a stipulation by no later than noon on September 5, 2014. If the parties are not able to
8 agree, Plaintiffs shall file a brief on this issue by no later than noon on September 5, 2014.
9 Defendants shall file a response by no later than noon on September 10, 2014.

10 With respect to the parties objections to final jury instructions, the Court notes that
11 Defendants have belatedly raised new issues. The parties have waived their rights to request
12 jury instructions that were not submitted prior to the final pretrial conference, unless there has
13 been a substantial change in law warranting such additional requests or the requests are based
14 upon evidence that was presented at trial. In addition to requesting several new instructions,
15 Defendants now object to an instruction to which they had previously stipulated – the
16 instruction on the measure of damages. Nevertheless, Defendants raise an issue regarding the
17 damages the Estate may be awarded that warrants further briefing. If the parties agree that
18 Defendants have accurately stated the law and agree to the changes requested by Defendants to
19 the instruction on the measure of damages, the parties shall file a stipulation by no later than
20 noon on September 5, 2014. If the parties are not able to agree, Plaintiffs shall file a brief on
21 this issue by no later than noon on September 5, 2014. Defendants shall file a response by no
22 later than noon on September 10, 2014.

23 **IT IS SO ORDERED.**

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25 Dated: August 28, 2014

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27 JEFFREY S. WHITE
28 UNITED STATES DISTRICT JUDGE